

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>VERSUS TECHNOLOGY, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Civil Action No. 04-1231 (SLR)</b>
<b>v.</b>	)	
	)	
<b>RADIANCE, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**VERSUS’S MOTION TO STRIKE AND PRECLUDE THE AFFIDAVIT AND  
UNPRODUCED DOCUMENTS FILED WITH RADIANCE’S REPLY BRIEF**

Plaintiff Versus Technology, Inc. (“Versus”) moves the Court to strike the affidavit of Nathaniel Sims (“Sims Affidavit”) (D.I. 127) filed with Radianse Inc.’s (“Radianse”) Reply brief (D.I. 126) in support of its motion for summary judgment (D.I. 117). Versus also moves the Court to strike, and preclude from use at trial, the un-produced documents attached to the Sims Affidavit.

Contrary to Local Rule 7.1.3(c)(2), the Sims Affidavit (D.I. 127) was not filed, served or otherwise attached to the opening brief (D.I. 118) filed by Radianse in support of its motion for summary judgment (D.I. 117). Additionally, none of the documents included as “Exhibit A” to the Sims Affidavit (D.I. 127) were ever produced during discovery or otherwise served or filed by Radianse prior to the filing of the Sims Affidavit (D.I. 127). Finally, the “Exhibit A” documents are not properly authenticated, as required by Rule 56(e) of the Federal Rules of Civil Procedure. As with the two unauthenticated documents attached to Dr. Sims’ earlier filed expert report (D.I. 121, Ex. C), Dr. Sims fails to provide any personal knowledge to authenticate the newly

filed documents. These documents are therefore insufficient to support Radianse's motion.

*Medico v. Time, Inc.*, 643 F.2d 134, 135 (3rd Cir. 1981) (denying summary judgment where "the affidavit [movant] had advanced to authenticate the documents was not based on the personal knowledge of the affiant, as required by Rule 56(e).") In fact neither Radianse nor Dr. Sims make any effort to authenticate the documents filed with either the Sims Affidavit (D.I. 127, Ex. A) or those with Dr. Sims' earlier filed expert report (D.I. 121, Ex. C).

Because the Sims Affidavit and accompanying documents are untimely under Local Rule 7.1.3(c)(2) and insufficient evidence for summary judgment under Fed. R. Civ. P. 56(e), Versus respectfully requests that the Sims Affidavit and "Exhibit A" documents be stricken from the record and that Radianse be precluded from using these and all other un-produced documents at trial.

Respectfully Submitted,

DATED: January 3, 2006

/s/ James M. Lennon

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**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2005, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to the following, who is also ***SERVED BY HAND*** on this date:

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I hereby certify that on this date, I mailed the documents to the following non-registered participants:

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DATE: January 3, 2005

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